

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:10-CT-3074-FL

JERROD SMITH,

Plaintiff,

v.

LIEUTENANT T.W. LOCKLEAR,  
OFFICER DUPREE, ANTHONY  
THEDFORD, and L. KING,

Defendants.

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ORDER

Plaintiff, a federal inmate, filed this civil rights action *pro se* pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). On January 27, 2013, the court granted defendants' motion to dismiss, and dismissed the action without prejudice because plaintiff failed to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997e(a) prior to filing this action. The matter now is before the court on plaintiff's motion to reopen this case (DE 32). Defendants did not respond to plaintiff's motion. In this posture, the issues raised are ripe for adjudication.

Plaintiff requests that the court re-open this case because he now has completed the Federal Bureau of Prisons administrative remedy process for his claims. Because plaintiff completed the exhaustion process subsequent to the dismissal of his original action for failure to exhaust administrative remedies pursuant to § 1997e(a), he may not proceed in this action. See 42 U.S.C. § 1997e(a); Woodford v. Ngo, 548 U.S. 81, 84-85 (2006); see also, Gamble v. Wright, No. 5:11-CT-3176-FL (E.D.N.C. Mar. 20, 2015), appeal dismissed, No. 15-6875 (4th Cir. Oct. 15, 2015); Hargett

v. Beck, No. 04-CT-132-FL, \*2-3 (E.D.N.C. February 10, 2005). Rather, plaintiff now must re-file his exhausted claims in a separate action. Id.

In summary, plaintiff's motion (DE 32) is DENIED. Should plaintiff seek to re-file his complaint as a separate action, the new action will be deemed filed on April 29, 2015—the date plaintiff filed the instant motion to reopen. The clerk of court is DIRECTED to send plaintiff the civil rights package. Finally, where the case file is closed, the clerk also is DIRECTED to dispense with the taking into the record of this case any new materials.

SO ORDERED, this the 23rd day of October, 2015.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

LOUISE W. FLANAGAN  
United States District Judge